in the proper right of the holder there will be no merger; but that a prior estate in the holder's own right must merge in a reversion in *autre droit*.[7] Although it seems as improper to draw a distinction from the sequence of estates as from the process of conveyance, Coke's theory has received some notice from the courts.[8] But there is a clear decision against it.[9]

Numerous early decisions[10] and probably the majority of modern writers[11] lay down the rule that if the estates come into the same hand by act of the parties, merger ensues; if the accession is by act of law, the two estates continue their independent existences. The general American doctrine[12] and the principle of some English *obiter* declarations[13] is that merger is impossible in the case of estates held in different rights. A recent holding that a husband's purchase of the reversion expectant on his wife's term will not work a merger, even at common law, is in accord with these cases. *Hurley* v. *Hurley*, 42 Ir. L. T. 253 (Ire., Ct. App., Nov. 16, 1908). The conclusion reached seems on principle correct, the argument of the text-writers for merger in the case of estates united by act of the parties being in several respects open to objection. To say that the parties intend a merger is to argue in a circle; they intend merely the reasonably apparent consequences of their act. Where there is a well-settled conflict as to whether merger ensues, there is no reason for supposing that in fact it is intended. Indeed, the mere bringing of suit by the holder of the merged estate shows that it is only the acquiring party who intends the destruction of the prior estate. Nor can it be admitted that the foundation of merger is intention; certainly the theory on which a term for hundreds of years is drowned in a shorter reversionary term is not that the holder[14] intends the result. On general grounds of legal policy it seems desirable that the technical and metaphysical principle of merger be, as far as possible, limited in the modern law.

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# RECENT CASES.

ADVERSE POSSESSION — WHO MAY GAIN TITLE BY ADVERSE POSSESSION — TENANT HOLDING FOR DEFINITE TERM. — A leased land to B for a term of twelve years. Shortly afterwards A made an invalid gift of the land to C, and B, at A's direction, attorned and paid rent to C. C's actual possession was for less than the statutory period, but, coupled with that of B, it made up the time required by the statute. *Held*, that the possession of B cannot be adverse to A, and therefore the statute does not run in C's favor during the existence of the term. *Acharath Bappan* v. *Mathummal Chovi*, 4 Madras L. T. 327.

It is generally held in this country that if a tenant at will, or from year to year, disclaims the title of his landlord, claiming the fee adversely in himself or for a third person, and this disclaimer is brought to the notice of the landlord, the tenancy is forfeited and the statutory period begins to run. *Willison* v.

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[7] Co. Lit. 338 b.
[8] See Nurse *v.* Yerworth, 3 Swanst. 608, 618.
[9] Lichden *v.* Winsmore, 1 Rolle Abr. 934.
[10] 4 Leon. 37 (CII); Carter *v.* Lowe, Owen 56.
[11] See especially, 3 Preston, Conveyancing, 3 ed., 273 *et seq.*
[12] See Little *v.* Bowen, 76 Va. 724.
[13] See Yong *v.* Radford, Hob. 3.
[14] Hughes *v.* Robotham, Cro. Eliz. 302.

*Watkins*, 3 Pet. (U. S.) 43. The language of the courts is broad enough to cover the case of a tenant in for a definite term, and the same is true of a leading English case. *Hovenden* v. *Lord Annersley*, 2 Sch. & Lef. 607. But in England it was later held that the rule does not apply to a tenant for a term. *Doe d. Graves* v. *Wells*, 10 A. & E. 427. Even in this country the early dicta have lost force in some states. *Whiting* v. *Edmunds*, 94 N. Y. 309. The Indian rule is that the tenancy becomes forfeited only if the landlord elects to treat it so. See *Ittappan* v. *Manavikrama*, I. L. R. 21 Madras 153. A peculiar feature of the principal case is that, granted there is a forfeiture, the landlord, having directed the very acts which worked the forfeiture, would probably be estopped to assert his right of entry.

BANKRUPTCY — PREFERENCE — UNRECORDED TRANSFER OF SECURITY FOR PRESENT ADVANCES. — More than four months before the bankruptcy of X, A advanced money to X, taking a mortgage on realty which was not recorded until within four months of the bankruptcy. *Held*, that the mortgage is not a preference and hence the delay in recording is immaterial. *Claridge* v. *Evans*, 118 N. W. 198 (Wis.).

Section 60 *a* of the Bankruptcy Act of 1898 as amended in 1903 provides that "When the preference consists of a transfer, the period of four months shall not expire until four months after recording." Before this amendment, in determining whether transfers for antecedent debts were made within four months of the bankruptcy, the courts looked only at the date of making, not of recording. *In re Wright*, 96 Fed. 187. The amendment was passed to correct this situation. See *English* v. *Ross*, 140 Fed. 630, 635. But the requirement of recording does not make the mortgage in the present case a transfer for an antecedent debt; for it is a valid transfer between the parties without recording. *Mathwig* v. *Mann*, 96 Wis. 213. It was, then, a transfer for a present advance, and such a transfer, no matter when made, creates no preference as defined by the statute. *In re Noel*, 137 Fed. 694. Hence the four-months rule has no bearing on the case. Therefore the amendment, which regulated only the mode of determining the four-months period, does not apply, and the decision seems clearly right.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — RIGHT OF ACTION FOR MALICIOUS ATTACHMENT. — A bankrupt corporation brought an action for malicious attachment of property. The defendant asked for a judgment on the pleadings on the ground that whatever right of action the plaintiff might have had was vested in its trustee in bankruptcy. *Held*, that the plaintiff cannot maintain the action. *Hansen Mercantile Co.* v. *Wyman, Partridge & Co. et al.*, 41 Chic. L. N. 120 (Minn., Sup Ct., Oct. 2, 1908).

Under § 70 *a* of the Bankruptcy Act of 1898 the trustee in bankruptcy is vested with all rights of action arising from injury to the property of the bankrupt. An action for malicious prosecution and arrest is a personal action and does not pass to the trustee. *In re Haensell*, 91 Fed. 355. And an action for malicious abuse of an attachment process is held to be an action for a personal tort, although there is an injury resulting to the bankrupt's business. *Noonan* v. *Orton*, 34 Wis. 259. But the principal case is distinguishable in that the plaintiff is a corporation and as such, of course, cannot sue for a purely personal tort. The tort of malicious attachment has two elements. It is not only a personal injury, but also an injury to property in that it hurts the defendant's business and credit. *Lawrence* v. *Hagerman*, 56 Ill. 68. It is submitted that when the plaintiff in such a suit is a corporation, the gist of the action is the injury to its property. *Cf. Trenton Ins. Co.* v. *Perrine*, 23 N. J. L. 402. It follows that its right of action vests in the trustee.

BILLS AND NOTES — ANOMALOUS INDORSER — PAROL EVIDENCE TO SHOW INTENT OF PARTIES. — §§ 113 and 114 of the Negotiable Instruments Law provide that "Where a person not otherwise a party to an instrument